



## King County

### Government Accountability and Oversight Committee

#### STAFF REPORT

<b>Agenda Item:</b>	9	<b>Name:</b>	Beth Mountsier
<b>Proposed No.:</b>	2011-0474	<b>Date:</b>	December 6, 2011
<b>Invited:</b>	Pam Elardo, Director, Wastewater Treatment Division, Department of Natural Resources and Parks Mike Merritt, Director of Governmental Relations, Port of Seattle		

#### SUBJECT

AN ORDINANCE authorizing the condemnation of certain property for an easement for construction of a storage tank and appurtenances to control combined sewer overflows for the South Magnolia combined sewer overflow project, capital improvement project 423607.

#### SUMMARY

The legislation will enable King County, if necessary, to condemn permanent subterranean easements on properties for the conveyance and storage facilities associated with a new Magnolia Combined Sewer Overflow (CSO) Control project in the South Magnolia basin. The construction of the facilities will help protect the water quality of Puget Sound and public health.

#### BACKGROUND

##### ***Magnolia Combined Sewer Overflow Control Project***

Within Seattle, the sewer and stormwater systems are 'combined' conveying both wastewater and stormwater to the West Point Treatment Plant. Throughout this system there are numerous Combined Sewer Overflow (CSO) control structures designed to act as a relief valve when there are major storm events. These allow overflows rather than overwhelming the conveyance system and the treatment plant with too much effluent.

When heavy rains cause the South Magnolia Trunk Sewer to exceed capacity, a combination of stormwater and sewage overflows from the Magnolia CSO Control Structure to an overflow sewer and then into an outfall in Puget Sound. Over the last 20 years, this has resulted in an average of 19.2 overflows per year. Wastewater Treatment Division (WTD) is designing and will construct a new CSO storage facility to meet the Washington State Department of Ecology's requirement to reduce combined

sewer overflows at control points to an average of no more than one per year per location.

In 2007 WTD began a process to identify alternatives for control of combined sewer overflows in the South Magnolia basin and thereby reduce overflows into Elliott Bay and Puget Sound. After extensive review of alternatives, involving a number of community meetings, WTD determined the best alternative was construction of a storage tank in the general area adjacent to 23<sup>rd</sup> Avenue West and West Garfield Street in Seattle. The Port of Seattle owns a property in this area and the City of Seattle also owns a nearby park, Smith Cove Park.

### ***Negotiations with the Port of Seattle and the City of Seattle***

WTD, the Port, and the City of Seattle began a series of workshops, public meetings, and negotiations exploring a site for the storage facility on either Port or Seattle Parks property in 2010. Based on technical requirements and community input, WTD determined the Port's West Yard (a portion of Terminal 91) is the preferred site for the project. It is apparently a better site than the adjacent Smith Cove Park because of the location of future improvements to the Magnolia Bridge and other considerations.

The preliminary or conceptual design for the storage tank in the West Yard of Terminal 91 will require a 32,900 square foot subterranean easement along with surface access for hatches, and an aboveground ancillary building. Construction of the storage tank will also require a 60,000 square foot temporary construction easement on the same property. WTD would prefer to limit its costs (and costs to ratepayers) by purchasing the minimal amount of subterranean easements and portions of the property as necessary for access and the one ancillary building. As required by state law, the acquisition of the easements or property will have to be based upon fair compensation to the Port for the value of the easement and property.

In July 2011 WTD sent an offer letter to the Port for the purchase of the easements and access areas on the West Yard. To date, WTD has received no response to this letter.

The Port wants to maintain the value of its holdings to the extent possible. And, based on Council staff conversations with Port representatives, it is apparent that the Port would prefer, if possible, to potentially swap its property with the adjacent City of Seattle Smith Cove Park property (with the rationale that the subterranean tank might not impact the park in the same manner as it may impact the Port's usage of the property.) Because of this situation, Seattle Parks has been included in some of the negotiations. However, WTD cannot compel Seattle to swap or sell its property in exchange for the West Yard. But it should also be noted that the location of the storage facility on the West Yard will not necessarily preclude a property swap/sale now or at a future time.

Since the identification of the preferred site for the subterranean storage tank, the Port and Seattle Parks have continued to discuss the land exchange but have not reached a

conclusion and, therefore, the Port has not yet committed to a sale of the requested easement.

The Port is considered a quasi-governmental agency, but that in no way impedes WTD and King County's right to acquire the necessary easement to the West Yard by eminent domain. The West Yard is currently leased to a private party for storage purposes. The Port continues to own and manage this and its other properties with an eye towards future development opportunities – to maximize its holdings and investments. This is a factor in its discussions with Seattle Parks and WTD.

WTD intends to continue to discuss voluntary acquisition from the Port of Seattle, but WTD needs the option to file for condemnation in court if voluntary negotiations cease to be productive or if an agreement cannot be reached in 2011 or early 2012. WTD has committed to the Department of Ecology that design and construction of CSO facilities will meet certain milestones within the next few years. WTD needs to direct its consultant engineers to proceed with design and to complete the final design by the end of 2012 so that the project can be bid and start construction in 2013.

### ***Additional Easements***

In addition to the CSO storage facility, the installation of a gravity sewer conveying the influent to the storage facility will also require WTD to drill a deep subterranean sewer pipe beneath Magnolia Boulevard and West Galer Street rights-of-way. This is the preferred design alternative before the final design of the conveyance and storage proceeds.

However, in the event the installation of the conveyance needs to be outside of the right-of-way, approximately seven properties maybe affected, in addition to Seattle Park properties along the conveyance. Property owners have received initial information and will be contacted once the exact location and impact have been determined during the design process. If necessary, negotiations with property owners along the route of the conveyance will be initiated and conducted in good faith. WTD believes there is adequate time to negotiate voluntary property rights, if they are necessary because the optimal design of the conveyance cannot stay within the right-of-way or is not feasible. Condemnation will only be sought if an agreement with the property owners cannot be reached.

### **ANALYSIS**

As described in the summary above, PO 2011-0474 authorizes condemnation proceedings for the sub-surface, or other property rights, which could include acquisition of properties associated with the respective parcels along potential conveyance alignments and in the potential locations of the storage facility for the combined sewer overflow control facility. These properties are privately held residential properties and publicly owned by the City of Seattle, the U.S. Navy and the Port of Seattle.

The ordinance describes the intent of the condemnation proceedings, if necessary and identifies the properties in the attachments to the properties. Staff have been given documentation that the proper notification to respective property owners has been advertised and mailed with regard to the full council hearing on this matter and possible action.

The proposed ordinance has been reviewed by the PAO.

### ***Compliance with State Law***

State law (RCW 8.12.030) authorizes condemnation proceedings; it indicates, in part,

Every city and town ...is hereby authorized and empowered to condemn land and property... for streets, avenues, alleys... either within or without the limits of such city for public parks, drives and boulevards, hospitals, pesthouses, drains and sewers,... after just compensation having been first made or paid into court for the owner in the manner prescribed by this chapter.

Chapter 35.58.320 gives Metropolitan Municipal Corporations the same power as those of cities, described above, with regards to eminent domain:

A metropolitan municipal corporation shall have power to acquire by purchase and condemnation all lands and property rights, both within and without the metropolitan area, which are necessary for its purposes. Such right of eminent domain shall be exercised by the metropolitan council in the same manner and by the same procedure as is or may be provided by law for cities, except insofar as such laws may be inconsistent with the provisions of this chapter.

Chapter 35.58.200 (2) authorizes those metropolitan municipal corporations authorized to do water pollution abatement, the authority to

Acquire by purchase, condemnation, gift or grant...metropolitan facilities for water pollution abatement...

As noted, above, WTD intends to continue negotiations to seek voluntary acquisition of the necessary properties. However, to ensure the properties can be acquired, the authorization to condemn is being sought at this time. WTD would prefer the authorization to condemn, prior to proceeding with further design of the facilities. This will allow WTD to know the breadth of the design options and properties available for this CSO facility to develop the optimal design in terms of both engineering and costs.

### ***Identification of the Affected Properties***

PO 2011-0474 identifies all of the properties that could need to be condemned for the conveyance and storage facilities. These properties are identified by parcel number on Attachments A and B to the ordinance. Staff have also attached another graphic depicting and identifying the parcels and their locations on Attachment 3 to this staff report.



***Fiscal Note***

A fiscal note has been submitted with the legislation. Staff notes that the fiscal note assumes acquisitions of subterranean easements only – if it should become necessary during the negotiations to acquire above ground easements or outright purchase of a property(ies) the cost could be higher. In addition, as noted, the property being sought for the storage facility currently is leased to a third party. The construction will most likely disrupt that use and could potentially affect future uses above ground. These issues will continue to be part of the negotiations regarding price of either a voluntary sale or a condemnation.

**ATTACHMENTS**

1. Proposed Ordinance 2011-0474
2. Transmittal letter dated November 8, 2011
3. Graphic of Magnolia CSO Conveyance Line (Project 423607), identifying parcels named in PO 2011-0474 in the project vicinity
4. 2011-0474 Fiscal Note



**KING COUNTY**  
**Signature Report**

Attachment 1  
1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**December 5, 2011**

**Ordinance**

**Proposed No. 2011-0474.1**

**Sponsors Phillips**

1                   AN ORDINANCE authorizing the condemnation of certain  
2                   property for an easement for construction of a storage tank  
3                   and appurtenances to control combined sewer overflows for  
4                   the South Magnolia combined sewer overflow project,  
5                   capital improvement project 423607.

6                   STATEMENT OF FACTS:

- 7                   1. On November 22, 2010, the King County council adopted the 2011  
8                   Annual Budget and program by Ordinance 16984 and provided for  
9                   funding for capital projects to support the wastewater treatment program.
- 10                  2. One of the funded capital projects is the South Magnolia combined  
11                  sewer overflow project for the construction of a storage tank, a  
12                  conveyance pipe and associated structures to control combined sewer  
13                  overflows in the South Magnolia basin, capital improvement project  
14                  423607.
- 15                  3. The South Magnolia trunk sewer conveys combined sewer overflow  
16                  from the South Magnolia basin to the West Point treatment plant. When  
17                  heavy rains cause flows to exceed the capacity of the South Magnolia  
18                  trunk sewer, a combination of stormwater and diluted sewage overflow  
19                  from the Magnolia combined sewer overflow control structure to an

20 overflow sewer and then to an outfall in Puget Sound. Over the last  
21 twenty years, this has resulted in an average of 19.2 overflows per year.

22 4. The South Magnolia combined sewer overflow project is necessary  
23 because state law mandates that combined sewer overflows occur no more  
24 than once every year for each location.

25 5. The location of the storage tank in the West Yard of Terminal 91,  
26 located south of the west end of the South Magnolia Bridge was chosen  
27 after a two-year review of potential sites. The property is owned by the  
28 Port of Seattle. The storage tank will require a thirty-two-thousand-nine-  
29 hundred-square-foot subterranean easement along with surface access for  
30 hatches, an aboveground ancillary building and a subterranean easement  
31 for conveyance pipe.

32 6. Construction of the storage tank will also require a sixty-thousand-  
33 square-foot temporary construction easement on the same property.

34 7. A conveyance pipe will run due west beneath public and residential  
35 properties from the storage tank to the diversion structure located on 32nd  
36 Avenue West. The conveyance pipe will require subterranean easements.

37 8. The capital budget and program provides for the acquisition of property  
38 interests and property rights necessary for the construction and operation  
39 of the South Magnolia combined sewer overflow project. Acquisition of  
40 such property is required to control and reduce combined sewer overflows  
41 in order to comply with state of Washington mandates and help protect our  
42 region's water quality.

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43 9. King County is authorized, by chapters 8.12 and 36.56 RCW, RCW  
44 35.58.320 and 35.58.200 and K.C.C. 28.01.030, to acquire and condemn  
45 real property for public use for sewage treatment and water pollution  
46 abatement facilities.

47 10. In order to acquire the property interests and property rights necessary  
48 for the construction, operation and maintenance of the South Magnolia  
49 combined sewer overflow project and all necessary facilities and  
50 conveyances associated therewith, it is necessary for King County to  
51 condemn certain lands and property rights in the properties identified by  
52 the parcel numbers set forth in Attachments A and B to this ordinance.

53 11. The King County council finds that public health, safety, necessity  
54 and convenience demand that the South Magnolia combined sewer  
55 overflow storage tank, conveyance pipe and appurtenant structures be  
56 constructed, and that those certain property interests and property rights in  
57 the parcels listed in Attachments A and B to this ordinance be condemned,  
58 appropriated, taken and damaged for the purposes herein described.

59 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

60 SECTION 1. It is necessary and in the best interest of the citizens of King  
61 County that all or any portion of the properties identified by the parcel numbers set forth  
62 and depicted in Attachments A and B to this ordinance and other property interests,  
63 property rights and/or rights in property be condemned, appropriated, taken and damaged  
64 for the purpose of the improvements described herein and depicted in Attachments A and  
65 B to this ordinance for the South Magnolia combined sewer overflow project, capital

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66 improvement project 423607, subject to the making or paying of just compensation to the  
67 owners herein in the manner provided by law.

68

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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Larry Gossett, Chair

ATTEST:

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Anne Noris, Clerk of the Council

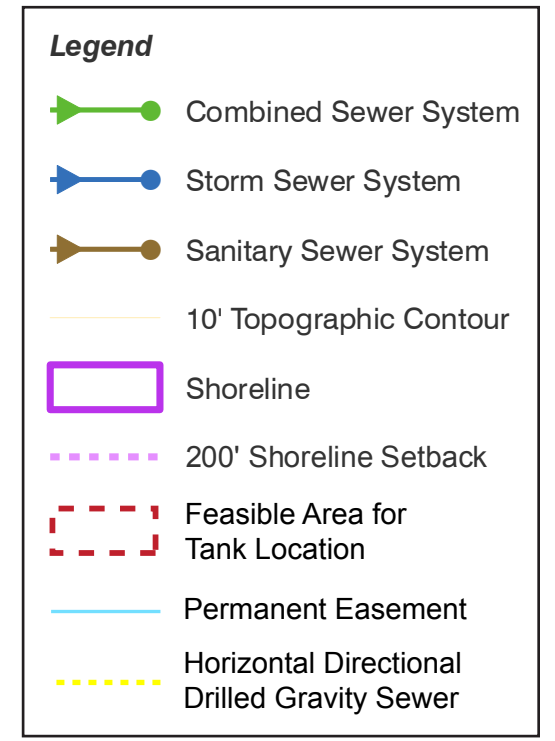
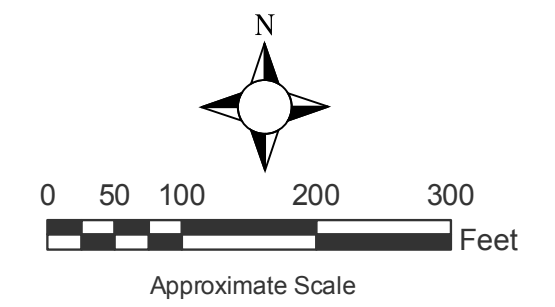
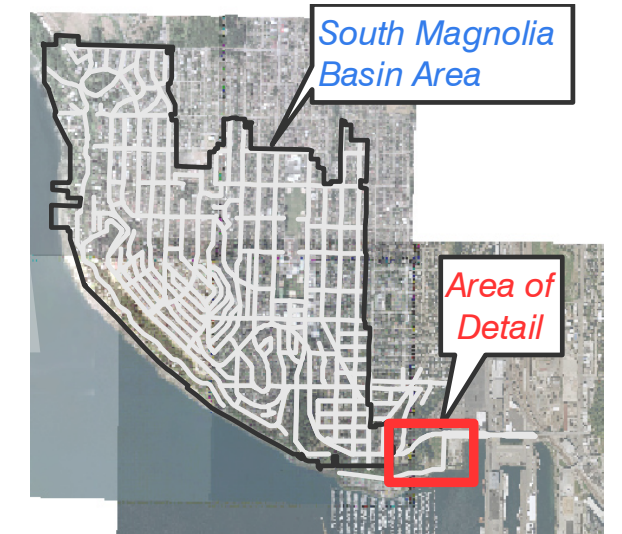
APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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Dow Constantine, County Executive

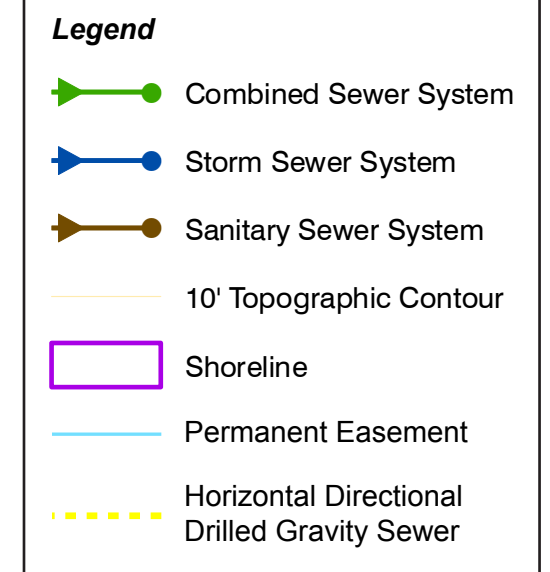
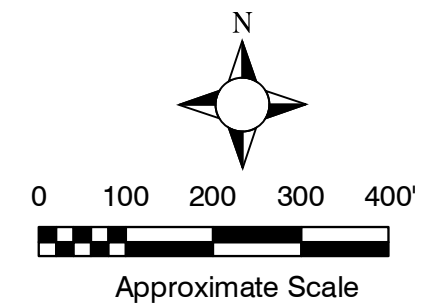
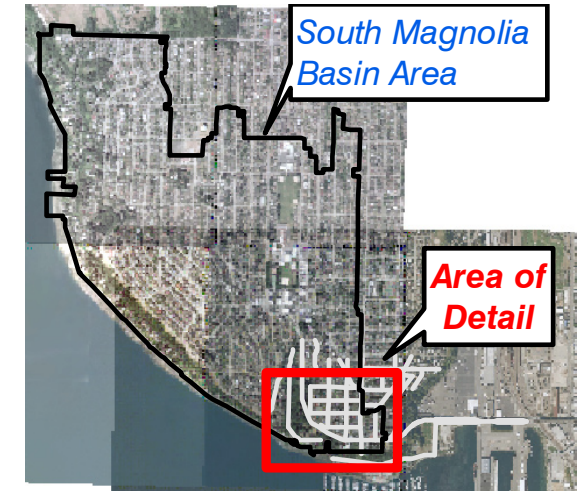
**Attachments:** A. Site Layout Plan East, B. Site Layout Plan West





Storage Tank Easement - Terminal 91 - West Yard  
 Parcel Numbers: 7666201146 & 7666201516, and vacated roads





# **SITE LAYOUT PLAN WEST**

**King County**  
Department of Natural Resources and Parks  
Wastewater Treatment Division

FIGURE 1-3.ai

A 30-foot wide subterranean easement for a conveyance pipe to be installed by directional drilling underneath seven of the following potential parcels:

7666201145, 2325039015, 2325039106, 5037300312, 2625039001, 2021200005, 5039800015, 5037300315, 2325039100, 23250300295, 5037300180, 5037300185, 5037300244, 5037300241, 5037300095, 5037300105, 5037300050, 5037300045



The Honorable Larry Gossett  
Chair, King County Council  
Room 1200  
C O U R T H O U S E

November 8, 2011

Dear Councilmember Gossett:

This letter transmits an ordinance that will enable King County to condemn property and property interests in the South Magnolia basin in order to make possible the construction of a facility to store combined sewer overflows (CSOs) to help protect Puget Sound. The ordinance supports the King County Strategic Plan of safeguarding the environment by protecting water quality through wastewater treatment.

When heavy rains cause the South Magnolia Trunk Sewer to exceed capacity, a combination of stormwater and sewage overflows from the Magnolia CSO Control Structure to an overflow sewer and then to an outfall in Puget Sound. Over the last 20 years, this has resulted in an average of 19.2 overflows per year. This new CSO storage facility is necessary to meet the Washington State Department of Ecology's requirement to reduce CSOs to an average of no more than one per year per location.

Beginning in 2007, the Wastewater Treatment Division (WTD) of the Department of Natural Resources and Parks began a process to identify alternatives for control of CSOs in the South Magnolia basin (Project) and thereby reduce overflows into Puget Sound. After extensive review of alternatives, WTD determined the best alternative was construction of a storage tank in the general area adjacent to 23rd Avenue West and West Garfield Street in Seattle.

WTD began negotiations with the Port of Seattle (Port) in 2010. Because the Port had been in negotiations with the City of Seattle Department of Parks and Recreation (Seattle Parks) to exchange the West Yard for the adjacent Smith Cove Park, Seattle Parks has been included in those discussions. The three parties began a series of workshops, public meetings, and negotiations exploring a site on either Port or Seattle Parks property. Based on technical requirements and community input, WTD determined the Port's West Yard (a portion of Terminal 91) is the preferred site for the Project.

The Port and Seattle Parks continue to discuss the land exchange and, therefore, the Port has not yet been able to commit to a sale of the requested easement. WTD has determined that it can acquire the necessary easement to the West Yard by eminent domain. Although the Port is considered a quasi-governmental agency, the West Yard is currently leased to a private



party for storage purposes. On July 15, 2011, WTD sent an offer letter to the Port for purchase of an easement on the West Yard. To date, WTD has received no response to this letter. WTD and the Port will continue to discuss voluntary acquisition. WTD will only file for condemnation in court if voluntary negotiations cease to be productive or if an agreement cannot be reached in 2011.

The installation of the gravity sewer for the storage facility will also require WTD to drill a deep subterranean sewer pipe beneath Magnolia Boulevard and West Galer Street rights-of-way. In the event that installation is outside of the right-of-way, approximately seven properties may be affected. Property owners have received initial information and will be contacted once the exact location and impact have been determined. If necessary, negotiations with property owners along the route of the gravity sewer will be initiated and conducted in good faith. WTD believes there is adequate time to negotiate voluntary property rights if staying within the right-of-way is not feasible. Condemnation will only be sought if an agreement with the owners cannot be reached before the Project is advertised.

If you would like more information on this ordinance, please contact Pam Elardo, P.E., Division Director of the Wastewater Treatment Division in the Department of Natural Resources and Parks, at 206-684-1236.

Thank you for your consideration of this ordinance. This important legislation will help King County residents enjoy clean water while continuing to receive necessary services.

I recommend that the Council approve this ordinance in order to ensure that WTD can construct this CSO project to help protect Puget Sound.

Sincerely,

Dow Constantine  
King County Executive

Enclosures

cc: King County Councilmembers  
    ATTN: Cindy Domingo, Acting Chief of Staff  
            Mark Melroy, Senior Principal Legislative Analyst, BFM Committee  
            Anne Noris, Clerk of the Council  
Carrie Cihak, Director of Policy and Strategic Initiatives, King County Executive Office  
Dwight Dively, Director, Office of Performance, Strategy and Budget  
Christie True, Director, Department of Natural Resources and Parks (DNRP)  
Pam Elardo, P.E., Division Director, Wastewater Treatment Division, DNRP



# Magnolia CSO Conveyance Line



(C) 2008 King County

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Date: 12/2/2011

Source: King County IMAP - Property Information (<http://www.metrokc.gov/GIS/IMAP>)



# FISCAL NOTE

Attachment 4

Ordinance/Motion No. 2011-XXXX  
 Title: CSO Control and Improvements - Magnolia Condemnation  
 Affected Agency and/or Agencies: Wastewater Treatment Division, Department of Natural Resources and Parks  
 Note Prepared By: Kevin Yokoyama  
 Note Reviewed By: Terry L. Smith

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

## Revenue:

Fund/Agency	Fund Code	Revenue Source	2011	2012	2013	2014
WTD -Wastewater Capital Fund	4616	Bond Proceeds	\$1,035,000	0	\$2,000,000	0
TOTAL			\$1,035,000	0	\$2,000,000	0

## Expenditures:

Fund/Agency	Fund Code	Department Code	2011	2012	2013	2014
WTD -Wastewater Capital Fund	4616	Bond Proceeds	\$1,035,000	0	\$2,000,000	0
TOTAL			\$1,035,000	0	\$2,000,000	0

## Expenditures by Category

	2011	2012	2013	2014
Salaries & Benefits	-	-	-	-
Supplies and Services	-	-	-	-
Capital Outlay	\$1,035,000	0	\$2,000,000	0
Other	-	-	-	-
TOTAL	\$1,035,000	0	\$2,000,000	0

Assumptions: This fiscal note accompanies an ordinance that will enable King County to condemn \$3.035 million in property and property interests in the South Magnolia basin in order to make possible the construction of a facility to store combined sewer overflows (CSOs). The ordinance requests condemnation of land owned by the Port of Seattle, a permanent easement of approximately \$1,000,000, and temporary easements of \$2,000,000. Additionally, condemnation is necessary for underground pipe easements - seven residential properties at \$5,000 each, for a total of \$35,000. Acquisition of the permanent and residential easements is scheduled for 2011 and acquisition of the temporary easements is scheduled for 2013 (WTD CIP Project 423607 CSO Magnolia).

December 6, 2011

em

Sponsor: Lambert

Proposed No.: 2011-0474

1 **AMENDMENT TO PROPOSED ORDINANCE 2011-0474, VERSION 1**

2 On page 3, after line 58, insert:

3 "12. The executive has stated before proceeding with condemnation he  
4 will facilitate discussions between King County, the city of Seattle and the  
5 Port of Seattle with the goal of reaching agreement to provide King  
6 County needed access for the proposed combined sewer overflow control  
7 facility at the county's preferred site which minimizes impacts to the city  
8 of Seattle's adjacent park facilities and the Port of Seattle's property. King  
9 County is pleased that the city of Seattle and the Port of Seattle may  
10 continue to discuss a potential exchange of adjacent properties."

11 **EFFECT:** The amendment adds another factual statement to the 'Statement of Facts'  
12 regarding the executive's actions prior to proceeding with property easement  
13 condemnation at the Port of Seattle or City of Seattle properties.